

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

MARCUS ORLANDO TAITE,)	
a/k/a DRELIJAH J.)	
MUHAMMAD-ALI, #180644,)	
)	
Petitioner,)	
)	CASE NO. 2:21-cv-04-WHA-JTA
v.)	[WO]
)	
JIMMY THOMAS, <i>et al.</i> ,)	
)	
Respondents.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

On January 4, 2021, Petitioner, an Alabama inmate at the Bibb Correctional Facility, filed a petition containing disjointed and largely unintelligible claims appearing to attack his state conviction and sentence. Doc. 1. Because Petitioner appeared to attack the state court judgment under which he is in custody, his petition was docketed as one filed under 28 U.S.C. § 2254. When filing his petition, Petitioner did not submit the \$5.00 filing fee for a habeas action, and he did not apply for leave to proceed *in forma pauperis* (“IFP application”). Consequently, on February 22, 2021, the Court entered an order directing Petitioner to either submit the \$5.00 filing fee by March 8, 2021, or submit a properly completed IFP application by the same date. Doc. 4. The Court advised Petitioner that his IFP application had to be accompanied by a prison account statement from the account clerk at the Bibb Correctional Facility with the account clerk’s certified statement of the balance in Petitioner’s prison account when he filed his petition. *Id.* at 1–2. The Court

specifically cautioned Petitioner that his failure to comply with its order would result in a recommendation that his case be dismissed. *Id.* at 2.

On March 4, 2021, Petitioner filed a document with the Court wherein he states he “will never pay” a filing fee in this action. Doc. 5 at 1. The requisite time for Petitioner to comply with the Court’s order of February 22, 2021, has passed without Petitioner submitting either the filing fee or a properly completed IFP application accompanied by his prison account statement from the account clerk at Bibb Correctional Facility. Consequently, the Court concludes that dismissal of this action without prejudice is appropriate. *See Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989) (holding that, generally, where a litigant has been forewarned, dismissal for failure to obey a court order is not an abuse of discretion).

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that this case be DISMISSED WITHOUT PREJUDICE because Petitioner has failed to comply with the Court’s order that he submit either the \$5.00 filing fee or a properly completed IFP application accompanied by his prison account statement from the account clerk at the Bibb Correctional Facility.

It is further

ORDERED that the parties shall file any objections to this Recommendation by **April 13, 2021**. A party must specifically identify the factual findings and legal conclusions in the Recommendation to which objection is made; frivolous, conclusive, or general objections will not be considered. Failure to file written objections to the

Magistrate Judge's findings and recommendations under 28 U.S.C. § 636(b)(1) shall bar a party from a *de novo* determination by the District Court of legal and factual issues covered in the Recommendation and waives the right of the party to challenge on appeal the District Court's order based on unobjected-to factual and legal conclusions accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982); 11TH CIR. R. 3-1. *See Stein v. Lanning Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981) (en banc).

DONE on this 29th day of March, 2021.

/s/ Jerusha T. Adams
JERUSHA T. ADAMS
UNITED STATES MAGISTRATE JUDGE